

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No.39007
Docket No. SG-39064
08-3-NRAB-00003-050573
(05-3-573)

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of W. A. Gibbons, for all time lost including holiday pay from July 1, 2004, to July 14, 2004, account Carrier violated the current Signalmen’s Agreement, particularly Rules 62 and 80, when it improperly withheld the Claimant from service after he was fully released to return to work from a medical leave of absence and he gave Carrier 48 hours’ advance notice as required by Rule 62. Carrier’s File No. 1408337. General Chairman’s File No. N 62 482. BRS File Case No. 13250-UP.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The pertinent background facts are undisputed. The Claimant was hospitalized in March of 2004 after experiencing a cardiac event in connection with an abnormal stress test. The Claimant was granted a medical leave of absence until June 20, 2004. In the Carrier's letter to the Claimant that granted the leave, the Carrier also explained that it would require certain medical information before the Claimant could be returned to work. The letter listed three types of information required, the second of which was the Discharge Summary from the hospital. Although the Claimant sought to return to work on July 1, 2004, he only supplied two of the three items of required information. The Discharge Summary was not provided until July 13, 2004. After receiving all of the medical information, the Carrier's Health Services Department issued its approval of the Claimant's return to service within 24 hours.

In Awards of the Board and Public Law Boards as well as the decisions of courts too numerous to require citation, it has become very well settled that Carriers have the right to determine the physical and mental fitness of their employees. This right is consistent with the Carrier's objective to promote the highest degree of safety for its employees as well as the public. We do not find this right to be inconsistent with the provisions of Rules 62 or 80 of the Agreement. Indeed, neither Rule explicitly restricts the Carrier's access to relevant medical information reasonably necessary to make its determination. Moreover, neither Rule gives an employee the right to return to service before the expiration of a medical leave of absence without having to establish the requisite degree of fitness.

Nothing in the record establishes that the Carrier acted unreasonably in requiring the Discharge Summary.

Given the state of the record herein, we must find that the Organization and the Claimant failed to sustain the burden of proof to establish facts that demonstrate a violation of the Agreement. Accordingly, the claim must be denied.

Form 1
Page 3

Award No. 39007
Docket No. SG-39064
08-3-NRAB-00003-050573
(05-3-573)

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 27th day of March 2008.